

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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MICHAEL LoPORTO,

Plaintiff,

v.

Civil Action No.: 1:15-cv-866

COUNTY OF RENSSELAER, YOEUL C.  
SMITH, III, also known as and practicing law  
Under the assumed name of Trey Smith,  
Individually and in his capacity as appointed  
Special District Attorney for the County of  
Rensselaer; RICHARD J. McNALLY, JR.,  
Individually and in his capacity as District  
Attorney for the County of Rensselaer;  
WILLIAM A. McINERNEY; JOHN F.  
BROWN; DANIEL B. BROWN; and JOHN J.  
OGDEN, individually and as investigator for  
The New York State Police,

(LEK/DJS)

Defendants.

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**DECLARATION OF JOHN E. SWEENEY**

**JOHN E. SWEENEY**, hereby declares under the penalty of perjury:

1. I am an attorney duly admitted to practice in this Court and am counsel to plaintiff, Michael LoPorto in the above-captioned case.
2. I submit this Declaration and Memorandum of Law in Opposition to Defendant County of Renssealer's Motion\ to Dismiss.
3. For the reasons set forth in Plaintiff's Memorandum of Law in Opposition, the Court should deny defendants' Motions to Dismiss, or in the alternative, stay a Decision & Order pending a determination in the *McDonough v. Smith, et al.* companion case that is currently

pending in the Second Circuit Court of Appeals. In the further alternative, plaintiff reserves the right to move to replead the Complaint due to plaintiff's former counsel's disqualification and in the interests of justice.

Pursuant to 28 U.S.C. §1746, I declare under the penalty of perjury that the foregoing is true and correct.

Executed on: June 19, 2017

/s/ John E. Sweeney

**JOHN E. SWEENEY, ESQ.**